



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/821,109	04/08/2004	Michael Cafaro	HEL177/4-010US	8231
21586	7590	01/29/2011		
VINSON & ELKINS, L.L.P.				
FIRST CITY TOWER				
1001 FANNIN STREET, SUITE 2500				
HOUSTON, TX 77002-6760				
EXAMINER				
STEITZ, RACHEL RUNNING				
ART UNIT		PAPER NUMBER		
3776				
NOTIFICATION DATE		DELIVERY MODE		
01/20/2011		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

IPITLdocket@velaw.com
bmelder@velaw.com
dwilcox@velaw.com

Office Action Summary

Application No.

10/821,109

Applicant(s)

CAFARO ET AL.

Examiner

RACHEL R. STEITZ

Art Unit

3776

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 November 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3, 5, 6 and 11-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 3, 5, 6, 11-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-945)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

1. Claims 14-16 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 14, states "wherein the curling iron is configured to heat the hair of a user primarily through conduction of heat", however, the specification does not disclose the curling iron being used "primarily" through conduction of heat.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 3, 5, 6, and 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Leung (United States Patent Publication No. 2003/0052115) in view

of Nakagawa et al. (United States Patent Publication No. 2002/0189128) and Lo (US 2003/0071027).

Leung discloses a hair styling device that heats hair by conduction of heat from a heated surface (see para 0028) and includes a fan and a motor. The device further comprises a handle portion 100, a barrel portion 300 adjoining the handle portion, a heater 216 contained in the barrel portion, a flipper 303 mechanically linked to a flipper actuator, air inlets in the housing, an air guide 119 for directing air into the barrel; and outlet holes 307 formed in the barrel. Leung does not disclose the ion generator or the device being a flat straightener. Nakagawa et al. disclose a hair styling appliance having an ion generator system 62. The ion generator system comprises an anode pin and a cathode ring. The device further includes an indicator LED 9 for the ion generator. It would have been obvious to one skilled in the art to provide the curling iron of Leung with an ion generator system in view of Nakagawa et al. in order to treat the hair and make it smooth and silky. Lo teaches a curling iron and a straightener (see Figures 4-7). It would be obvious to one having ordinary skill in the art at the time the invention was made to modify the device of Leung by having the device be a flat straightener as shown in Lo, in order to allow the user multiple functions to straighten the user's hair.

3. Claims 14-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Leung (United States Patent Publication No. 2003/0052115) in view of Nakagawa et al. (United States Patent Publication No. 2002/0189128).

Leung discloses a hair styling device that heats hair by conduction of heat from a heated surface (see para 0028) and includes a fan and a motor. The device further comprises a handle portion 100, a barrel portion 300 adjoining the handle portion, a heater 216 contained in the barrel portion, a flipper 303 mechanically linked to a flipper actuator, air inlets in the housing, an air guide 119 for directing air into the barrel; and outlet holes 307 formed in the barrel and the curling iron is configured to heat the hair of a user primarily thorough conduction of heat (i.e. fan can be turned off while heater still is working paragraph 31). Leung does not disclose the ion generator. Nakagawa et al. disclose a hair styling appliance having an ion generator system 62. The ion generator system comprises an anode pin and a cathode ring. The device further includes an indicator LED 9 for the ion generator. It would have been obvious to one skilled in the art to provide the curling iron of Leung with an ion generator system in view of Nakagawa et al. in order to treat the hair and make it smooth and silky.

Response to Arguments

4. In response to applicant's argument that the proposed combination of Leung, Nakagawa, and Lo is improper since it would change the principles of operation of the prior art being modified. Leung discloses a curling iron that uses the mode of conduction (see Board decision dated September 14, 2009) therefore modifying it with Lo is not improper because they both teach using conduction as a way to heat the user's hair.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to RACHEL R. STEITZ whose telephone number is (571)272-1917. The examiner can normally be reached on Monday-Friday 9:00 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached on (571) 272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Rachel Running Steitz/
Primary Examiner
Art Unit 3776